

**United States Bankruptcy Court  
Central District of California  
Riverside  
Judge Mark Houle, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 3, 2021**

**Hearing Room 301**

10:00 AM

**6:21-13793 Gustavo H Robalino and Rosa Robalino**

**Chapter 7**

**#1.00** Pro se Reaffirmation Agreement Between Debtor and Capital One Auto Finance, a division of Capital One, in the amount of \$9,968.39, rep 2011 Honda Accord

EH\_\_

Docket 21

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Gustavo H Robalino

Pro Se

**Joint Debtor(s):**

Rosa Robalino

Pro Se

**Trustee(s):**

Karl T Anderson (TR)

Pro Se

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**6:21-14264 Annette Lee Sandoval**

**Chapter 7**

**#2.00** Pro se Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation, in the amount of \$38,209.14, re 2019 Toyota Tacoma

Also #3

EH\_\_

Docket 10

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Annette Lee Sandoval

Pro Se

**Trustee(s):**

Robert Whitmore (TR)

Pro Se

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**6:21-14264 Annette Lee Sandoval**

**Chapter 7**

**#3.00** Pro se Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation, in the amount of \$28,722.92, re: 2020 Toyota C-HR

Also #2

EH\_\_

Docket 11

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Annette Lee Sandoval

Pro Se

**Trustee(s):**

Robert Whitmore (TR)

Pro Se

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**6:21-14308     Anne Ouprasit**

**Chapter 7**

**#4.00**     Pro se Reaffirmation Agreement Between Debtor and Wells Fargo Bank in the amount of \$20,737.75, re 2016 Lexus IS

EH\_\_

Docket     9

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Anne Ouprasit

Pro Se

**Trustee(s):**

Larry D Simons (TR)

Pro Se

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**6:21-14730 Manuel Andujo, Jr. and Valerie Tarango**

**Chapter 7**

**#5.00** Pro se Reaffirmation Agreement Between Debtor and Golden 1 Credit Union, in the amount of \$18,253.30, re: 2017 Chrysler Pacifica

EH\_\_

Docket 11

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Manuel Andujo Jr.

Represented By  
Daniel King

**Joint Debtor(s):**

Valerie Tarango

Represented By  
Daniel King

**Trustee(s):**

Lynda T. Bui (TR)

Pro Se

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**6:21-14768 Patra Yvonne Abbott**

**Chapter 7**

**#6.00** Pro se Reaffirmation Agreement Between Debtor and Ford Motor Credit Company LLC, in the amount of \$29,542.14 re: 2016 Ford Escape

EH\_\_

Docket 8

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Patra Yvonne Abbott

Represented By  
Neil R Hedtke

**Trustee(s):**

Karl T Anderson (TR)

Pro Se

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**6:09-21899 Wendell J Davis, Sr and Trevina L Davis**

**Chapter 7**

**#7.00** Motion to Reopen Chapter 7 Case  
(Motion filed 10/6/21)

(Placed on calendar by order entered 10/7/21)

EH\_\_

**[Tele. appr. Steven Gluck, rep. Debtors]**

Docket 51

**Tentative Ruling:**

**BACKGROUND**

On June 2, 2009, Wendell J. Davis, Sr. and Trevina L. Davis (collectively "Debtors") filed a Chapter 7 voluntary petition. On December 16, 2009, Debtors' debts were discharged, and, on January 14, 2010, Debtors' Chapter 7 voluntary petition was closed.

Eleven years later on October 6, 2021, Debtors filed a motion to reopen their Chapter 7 case ("Motion"). [Dkt. No. 51]. In Schedule A, Debtors listed the property located at 12605 Vintner Dr., Rancho Cucamonga ("Property") as their residence with a value of \$425,000. [Dkt. No. 51, Ex. B]. In Schedule D, Debtors listed as a 1st lien on the Property a loan with Countrywide Home Loan in the amount of \$710,000. [Dkt. No. 51, Ex. C]. Debtors also listed a junior lien on the Property an obligation to National City Bank in the amount of \$97,035 ("Junior Lien"), with the entire amount being unsecured. *Id.* National City Bank subsequently sold the loan to Specialized Loan Servicing LLC, who is now seeking to enforce the loan. [Dkt. No. 51].

In the Motion, Debtors ask the Court to reopen the case, so they can avoid the Junior Lien and sell their home. *Id.* On October 7, 2021, the Court ordered Debtors to file a supplement providing details as to whether reopening the case is futile because the Junior Lien does not appear to be a judicial lien under 11 U.S.C. § 552(f)(1). On October 19, 2021, Debtors filed the supplemental, and no opposition has been filed.

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**CONT... Wendell J Davis, Sr and Trevina L Davis**

**Chapter 7**

**DISCUSSION**

Pursuant to 11 U.S.C. § 350(b), "a case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." "A case may be reopened on motion of the debtor or other party in interest..." Fed. R. Bankr. P. 5010. Here, Debtors ask the Court to reopen the case to have a junior lien avoided. [Dkt. No. 51].

In determining whether to reopen a case, the Bankruptcy Court may consider numerous factors, including (1) the benefit to creditors, (2) the benefit to debtor, (3) the prejudice to affected parties, (4) the availability of relief in other forums, (5) whether the estate has been fully administered, (6) the length of time between the closing of the case and the motion to reopen, and (7) good faith. *In re Consol. Freightways. Corp.*, 553 B.R. 396, 399 (Bankr. C.D. Cal. 2016).

A debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under § 522(b), if such lien is— (A) a judicial lien, other than a judicial lien that secures a debt. 11 U.S.C. § 522(f)(1)(A). The term "judicial lien" means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding. 11 U.S.C. §101(36). Here, Debtors offer no evidence that the Junior Lien is a judicial lien. In fact, the Junior Lien appears to be a Home Equity Line of Credit (HELOC), which is not a judicial lien. *See* 11 U.S.C. §101(36). To this end, the supplement does not address the futility issue raised in the Court's order in October 7, 2021.

Moreover, the Court notes that Debtors did not file the proper form of the proof of service.

**TENTATIVE RULING**



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**CONT... Wendell J Davis, Sr and Trevina L Davis**

**Chapter 7**

For the reasons stated above, the Court is inclined to DENY the Motion to reopen as futile.

APPEARANCES REQUIRED.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Wendell J Davis Sr

Represented By  
Steven M Gluck

**Joint Debtor(s):**

Trevina L Davis

Represented By  
Steven M Gluck

**Movant(s):**

Wendell J Davis Sr

Represented By  
Steven M Gluck  
Steven M Gluck

**Trustee(s):**

Steven M Speier (TR)

Represented By  
Steven M Speier

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**6:10-48136 Ariel Rodriguez and Jessica Maribel Rodriguez**

**Chapter 7**

**#8.00** CONT. Motion to Avoid Lien Real Property with Ford Motor Credit Company, LLC aka Ford Motor Credit Debtor's Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. 522(f) (Real Property)  
(Motion filed 9/1/21)

From: 10/6/21

(Placed on calendar by order entered 9/20/21)

EH\_\_

**[Tele. appr. Rosendo Gonzalez, rep. Debtors]**

Docket 22

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ariel Rodriguez

Represented By  
Rosendo Gonzalez

**Joint Debtor(s):**

Jessica Maribel Rodriguez

Represented By  
Rosendo Gonzalez

**Movant(s):**

Ariel Rodriguez

Represented By  
Rosendo Gonzalez

Jessica Maribel Rodriguez

Represented By  
Rosendo Gonzalez  
Rosendo Gonzalez

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**CONT... Ariel Rodriguez and Jessica Maribel Rodriguez**

**Chapter 7**

**Trustee(s):**

Patricia J Zimmermann (TR)

Pro Se

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**6:20-14908 Fury Investments, Inc. fdba Zelda's Nightclub**

**Chapter 7**

**#9.00 Notice of Trustee's Final Report and Applications for Compensation**

EH\_\_

**[Tele. appr. Howard Grobstein, chapter 7 trustee]**

**[Tele. appr. Jeremy Faith, rep. trustee, Howard Grobstein]**

Docket 65

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Fury Investments, Inc. fdba Zelda's

Represented By  
Jenny L Doling

**Trustee(s):**

Howard B Grobstein (TR)

Represented By  
Ori S Blumenfeld

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**6:21-10253 Gabriel Richard Lee and Maria Monina Ignacio Lee**

**Chapter 7**

**#10.00 Notice of Trustee's Final Report and Applications for Compensation**

EH\_\_

Docket 24

**Tentative Ruling:**

No opposition has been filed.  
Service was proper.

The applications for compensation of the Trustee and Counsel for the Trustee have been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 1,701.22  
Trustee Expenses: \$ 107.29

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

<b>Party Information</b>
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**Debtor(s):**

Gabriel Richard Lee

Represented By  
Edgardo M Lopez

**Joint Debtor(s):**

Maria Monina Ignacio Lee

Represented By  
Edgardo M Lopez

**Trustee(s):**

Larry D Simons (TR)

Pro Se

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**6:21-10690 Raymond George Rocha and Maria Elena Rocha**

**Chapter 7**

**#11.00 Notice of Trustee's Final Report and Applications for Compensation**

EH\_\_

Docket 31

**Tentative Ruling:**

No opposition has been filed.  
Service was proper.

The applications for compensation of the Trustee and Counsel for the Trustee have been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 437.75  
Trustee Expenses: \$ 73.14

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

<b>Party Information</b>
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**Debtor(s):**

Raymond George Rocha

Represented By  
Sunita N Sood

**Joint Debtor(s):**

Maria Elena Rocha

Represented By  
Sunita N Sood  
Donna Belliveau

**Trustee(s):**

Karl T Anderson (TR)

Pro Se

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**6:21-11091 Sandra Kathryn Hutton**

**Chapter 7**

**#12.00** Motion to Sell Property of the Estate Free and Clear of Liens under Section 363(f) Chapter 7 Trustees Motion for Order: (1) Approving the Sale of Property of the Estate (Manufactured Home) Free and Clear of Certain Liens Pursuant to Bankruptcy Code §§ 363(b)(1) and 363(f), Subject to Overbids, Combined With Notice of Bidding Procedures and Request for Approval of the Bidding Procedures Utilized; (2) Approving Payment of Real Estate Commission; and (3) Granting Related Relief; Memorandum of Points and Authorities and Declaration of Lynda T. Bui in Support

EH\_\_

**[Tele. appr. Lynda Bui, chapter 7 trustee]**

Docket 20

**Tentative Ruling:**

Service: Proper

Opposition: None

**BACKGROUND**

On March 3, 2021, Sandra Kathryn Hutton ("Debtor") filed a Chapter 7 voluntary petition. Property of the Estate includes Golden West manufactured home located at 2692 E. highland Avenue, Space 84, Highland, California 92346 ("Property"). Property is in a community managed by the Fiesta Hills Mobile Home Park ("Park"). [Dkt. No. 20. Pgs. 4-5]. Debtor has stopped making the monthly lot rent to Park as of July 2021. *Id.* Purchaser has communicated with Park and will be signing her own Park lot rental agreement. *Id.* On Debtor's schedules A, B, C, and D, the Debtor valued Property at \$5,000, claimed an exemption in Property of \$5,000 pursuant to California code of Civil procedure ("CCP") § 703.140(b)(1) ("Exemption") and listed

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no liens impacting Property. *Id.* No liens impacting the Property are identified in the Title Report. [Dkt. No. 20, Ex. 2]. The Property is not subject to capital gains taxes. [Dkt. No. 20, pg. 8]. Trustee's Broker listed property for sale at \$55,000. [Dkt. No. 20, Pg. 6]. Trustee proposes to sell the Property to Alicia Lopez ("Purchaser") for \$47,000, after following one offer and a counteroffer. *Id.* There has been only one offer on Property since May 15, 2021. *Id.*

Proposed payments from the sale proceeds include: (1) \$2,820 for real estate brokers' commission; (2) \$940 for cost of sale; (3) \$950 for one-time reimbursement for clearing, cleaning up, and maintaining Property, and avoiding Park violations and marketing for sale; (4) \$5,000 for Debtor's exemption, leaving \$37,290 for the bankruptcy estate; (5) \$20 for secured taxes, and (6) \$2,425 for payoff for unpaid Lot Rent owed to Park. [Dkt. No. 20, Pgs. 7-8, 12].

On October 13, 2021, Trustee filed the instant sale motion ("Motion") for order (1) approving the sale of real property of the estate; (2) approving overbid procedure; and (3) approving payment of real estate brokers' commissions and other costs.

Service of the Motion was proper, and no opposition has been filed.

**DISCUSSION**

*I. Sale of Estate Property*

11 U.S.C. § 363(b)(1) allows a trustee to sell property of the estate outside of the ordinary course, after notice and a hearing. A sale pursuant to § 363(b) requires a demonstration that the sale has a valid business justification. *In re 240 North Brand Partners, Ltd.*, 200 B.R. 653, 659 (B.A.P. 9<sup>th</sup> Cir. 1996). "In approving any sale



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outside the ordinary course of business, the court must not only articulate a sufficient business reason for the sale, it must further find it is in the best interest of the estate, i.e. it is fair and reasonable, that it has been given adequate marketing, that it has been negotiated and proposed in good faith, that the purchaser is proceeding in good faith, and that it is an "arms-length" transaction." *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal.).

Here, the Court notes that the motion contains small evidence of Property's marketing. Although Trustee states that she employed a real estate broker to begin marketing Property on July 12, 2021, she does not provide any details about how or where the marketing was conducted.

*II. Sale Free & Clear of Liens*

11 U.S.C. § 363(f) states:

(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if-

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or

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(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

Here, Trustee proposes to sell under §§ 363(f)(2) and (4). [Dkt. No. 20, pgs. 12-13]. Debtor listed no liens impacting Property, and Trustee identifies no lienholders with liens affecting Property. Trustee argues that to the extent there are any unresolved liens or interests against the Property, Trustee will dispute them, and they will attach to the sale proceeds as permitted under § 363(f)(4). *Id.*

Trustee also argues that outstanding taxes of \$20 will be paid through escrow on the sale in the amount consented to by taxing agency and based on their consent to the sale. [Dkt. No. 20, pg. 13]. Since there is no opposition has been filed, the Court will interpret as consent under LBR 9013-1(f)(3).

Here, the Court finds that the sale price exceeds the aggregate value of the liens encumbering Property and, therefore, § 363(f)(3) permits Trustee to sell the Property free and clear of liens.

*III. 14-Day Stay*

FED. R. BANKR. P. Rule 6004(h) states: "An order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." The Court deems the absence of objections to be consent to the relief requested, pursuant to Local Rule 9013-(1)(h), and, therefore, will waive the stay of Rule 6004(h).

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*IV. Miscellaneous Provisions*

The Court has reviewed the remainder of Trustee's miscellaneous requests. Here, Trustee has proposed bidding procedures which require an initial overbid of \$5,000 above the proposed purchase price of \$47,000, with each additional bid in increments of \$1,000, or \$52,000. [Dkt. No. 20, pgs. 9-11]. The remaining overbidding procedures are outlined in the Motion. *Id.* The Court has reviewed the proposed overbidding procedures and finds such procedures to be reasonable. *Id.*

The Court has reviewed the requested Broker compensation of 6% of the sale price (totaling \$2,820), to be split 50/50 between Trustee's and Buyer's brokers, and finds such compensation to be reasonable in the circumstances. [Dkt. No. 20, pgs. 6-8]. The Court has reviewed the escrow fees, commissions, and other costs of sale and finds them reasonable. *Id.*

Also, the Court has reviewed the requested Broker of Trustee one-time reimbursement for (1) clearing, cleaning up, and maintaining Property, and (2) avoiding Park violations and marketing for sale at the highest possible price in the amount of \$950 and finds such reimbursement to be reasonable in the circumstances. *Id.*; [Dkt. No. 20, Ex. 3].

Finally, the Court has reviewed the declarations of Purchaser and Trustee and finds the declarations sufficient for a determination that Purchaser are a good faith purchaser pursuant to 11 U.S.C. § 363(m). [Dkt. Nos. 20 and 23].

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The Court is inclined to GRANT the motion in its entirety subject to any overbids being received, and after providing description of marketing efforts.

APPEARANCES REQUIRED.

<b>Party Information</b>
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**Debtor(s):**

Sandra Kathryn Hutton

Represented By  
Joel M Feinstein

**Movant(s):**

Lynda T. Bui (TR)

Pro Se

**Trustee(s):**

Lynda T. Bui (TR)

Pro Se

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**6:21-12124 Rafael Fausto**

**Chapter 7**

**#13.00** Debtor's Motion to Reopen Chapter 7 Case  
(Motion filed 10/14/21)

(Placed on calendar by order entered 10/14/21)

EH\_\_

**[Tele. appr. Chris Hewitt, rep. Debtor]**

Docket 26

**Tentative Ruling:**

**BACKGROUND**

On April 17, 2021, Rafael Fausto ("Debtor") filed a Chapter 7 voluntary petition. On August 2, 2021, Debtor's debts were discharged, and, on August 3, 2021, Debtor's Chapter 7 voluntary petition was closed.

On August 19, 2021, Debtor filed a motion to reopen his Chapter 7 case ("First Motion"). [Dkt. No. 19]. The motion alleged that Debtor seeks to vacate the discharge order and file a reaffirmation agreement with 21st Mortgage Corporation. *Id.* The Court, after reviewing the motion, denied the motion without prejudice because "a reaffirmation agreement made post-discharge is unenforceable" and "the Court lacks authority to vacate a discharge as to a single creditor for the purpose of entering into a reaffirmation agreement." [Dkt. No. 24].

On September 25, 2021, Debtor now filed another motion to reopen his Chapter 7 case ("Second Motion"), addressing the Court's reasons for denying First Motion and arguing that the Court can and should exercise its powers under 11 U.S.C. § 105(a) to ultimately approve a reaffirmation agreement. [Dkt. No. 26]. On October 29, the Court ordered Debtor to provide relevant caselaw in support of his position. [Dkt. No. 29].

In the Second Motion, Debtor argues that he needs to reopen the case due to

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**Chapter 7**

the inadvertence and/or mistake of the parties. *Id.* Debtor's attorney states that (1) Debtor's attorney received a reaffirmation agreement from 21st Mortgage Corporation on May 3, 2021 and forwarded to Debtor on May 18, 2021; and (2) Debtor returned the executed reaffirmation agreement to Debtor's attorney on May 27, 2021, but it was placed into a junk folder and it did not get forwarded to 21st Mortgage Corporation prior to the entry of discharge. [Dkt. No. 26, pgs. 3-4].

**DISCUSSION**

Pursuant to 11 U.S.C. § 350(b), "a case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." "A case may be reopened on motion of the debtor or other party in interest..." FED. R. BANKR. P. 5010. Here, Debtor ask the Court to reopen the case to file reaffirmation agreement. [Dkt. No. 26].

Section 524(c) governs reaffirmation agreements. The relevant portion of that section provides that a reaffirmation agreement "is enforceable only to any extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived, only if—(1) such agreement was made before the granting of the discharge under section 727 . . . ." 11 U.S.C. § 524(c)(1). A reaffirmation agreement is "made" when it is in writing and signed by the parties. *Id.*; *Chandler v. Peoples Bank & Trust Co. of Hazard*, 769 F. App'x 242, 246 (6th Cir. 2019) (citing *In re Jenerette*, 558 B.R. 189, 191 (Bankr. E.D. Mich. 2016)); *In re Giglio*, 428 B.R. 397, 402 (Bankr. N.D. Ohio 2009) (noting that under "basic principles of contract law" a reaffirmation agreement does not become a binding contract until it is signed).

A reaffirmation agreement that fails to strictly comply with § 524(c) is unenforceable in the Ninth Circuit. *See, e.g., In re Lopez*, 345 F.3d 701, 710 (9th Cir. 2003) (affirming lower court holding that reaffirmation agreement executed after discharge was invalid). The mandatory requirements in § 524(c) reflect Congress' intent to protect debtors from making reckless decisions with respect to their discharge. *In re Getzoff*, 180 B.R. 572, 574 (B.A.P. 9th Cir. 1995) ("The reaffirmation rules are intended to protect debtors from compromising their fresh start by making unwise agreements to repay dischargeable debts.") (citation omitted).

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Here, the Court notes that the reaffirmation agreement is not fully executed before the discharge order because it is not signed by 21st Mortgage Corporation. [Dkt. No. 26-1, pg. 9]; *see In re Keener*, Chapter 7, Case No. 20-60291, 2020 Bankr. LEXIS 2827 (Bankr. N.D. Ohio Oct. 9, 2020) (denying the debtor's request to vacate her discharge for filing the reaffirmation agreement with the creditor when the reaffirmation agreement was not signed by the creditor until two months after the discharge order was entered).

The majority of jurisdictions hold that a reaffirmation agreement made post-discharge is unenforceable. *See, e.g., In re Eastep*, 562 B.R. 783, 788 (Bankr. W.D. Okla. 2017); *In re Williams*, Case No. 11-00761 (Chapter 7), 2012 Bankr. LEXIS 1022, at \*5 (Bankr. D.D.C. 2012); *In re Mardy*, Case No. 10-73819-ast, Chapter 7, 2011 Bankr. LEXIS 880, at \*3 (Bankr. E.D.N.Y. Mar. 15, 2011); *In re Clark*, Case No. 8-10-73746-reg, Chapter 7, 2010 Bankr. LEXIS 4964, at \*5 (Bankr. E.D.N.Y. Dec. 21, 2010); *In re Engles*, 384 B.R. 593, 598 (Bankr. N.D. Okla. 2008).

Here, Debtor argues that, under the minority courts' approach, § 105(a) can be invoked as the equitable remedy to preserve an identifiable right conferred elsewhere in the Bankruptcy Code. [Dkt. No. 32, pg. 5]. Debtor argues that he has a right to exempt property owned at the time of bankruptcy filing because he (1) had an equitable interest in an amount \$3,524 at the time of the filing of his bankruptcy in his residence and (2) exempted the equity he had in his residence. *Id.* Debtor cites *Jamo* has the proposition that § 105(a) "may be invoked only if, and to the extent that, the equitable remedy dispensed by the court is necessary to preserve an identifiable right conferred elsewhere in the Bankruptcy Code." *In re Jamo*, 283 F.3d 392, 403 (1st Cir. 2002).

However, the *Jamo* Court held that " . . . the bankruptcy court lacked the power, section 105(a) notwithstanding, to modify the proposed reaffirmation arrangement . . . " *Id.* at 403-04. Also, the Ninth Circuit has rejected the post-discharge filing of a reaffirmation agreement. *See In re Bennett*, 298 F.3d 1059, 1067 (9th Cir. 2002) (holding that because "reaffirmation agreements are not favored," strict compliance with § 524(c) is mandated); *see also In re Obmann*, BAP No.

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**CONT... Rafael Fausto**

**Chapter 7**

CC-11-1156-HKiMk, 2011 Bankr. LEXIS 5298, at \*16-17 (B.A.P. 9th Cir. Dec. 9, 2011) (holding that § 105(a) does not amount to "a roving commission to do equity.") (citing *In re Saxman*, 325 F.3d 1168, 1174 (9th Cir. 2003)); *In re Reinertson*, 241 B.R. 451, 455 (B.A.P. 9th Cir. 1999) (holding that a bankruptcy court may not use its equitable powers "to defeat clear statutory language, nor to reach results inconsistent with the statutory scheme established by the Code.") (quoting *In re Powerine Oil Co.*, 59 F.3d 969, 973 (9th Cir. 1995)); *Geothermal Resources International, Inc. v. Lumsden*, 93 F.3d 648, 651 (9th Cir. 1996) ("While 'as a court of equity, [the bankruptcy court] may look through form to the substance of a transaction and devise new remedies,' *In re Chinichian*, 784 F.2d 1440, 1443 (9th Cir. 1986), the court cannot, in the name of its equitable powers, ignore specific statutory mandates.").

Moreover, the Bankruptcy Court cannot use equitable principles to disregard unambiguous statutory language. *Law v. Siegel*, 571 U.S. 415 (2014); *In re Markovich*, 207 B.R. 909, 911-12 (B.A.P. 9th Cir. 1997) (holding that a post-discharge reaffirmation agreement is not a basis for such relief, and a debtor lacks standing to seek revocation of a discharge); *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988) ("The short answer to these arguments is that whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code.").

Furthermore, even if the Court applies the minority courts' approach, in the present circumstances, the Court does not find such extraordinary circumstances that would allow Debtor to file a reaffirmation agreement after discharge had already occurred. *In re Judson*, 586 B.R. 771, 772 (C.D. Cal. 2018) (holding that the reaffirmation agreement must be made before the debtor receives a discharge) (citing *In re Bellano*, 456 B.R. 220, 222-23 (Bankr. E.D. Pa. 2011)).

**TENTATIVE RULING**

For the reasons stated above, the Court is inclined to DENY the motion.

APPEARANCES REQUIRED.

<b>Party Information</b>
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**CONT...      Rafael Fausto**

**Chapter 7**

**Debtor(s):**

Rafael Fausto

Represented By  
Christopher Hewitt

**Movant(s):**

Rafael Fausto

Represented By  
Christopher Hewitt

**Trustee(s):**

Steven M Speier (TR)

Pro Se

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**6:21-12467      Silvano Pivato and Victoria Ann Pivato**

**Chapter 7**

**#14.00**      Notice of Motion and Motion Objecting to Debtors' Claimed Exemptions;  
Memorandum of Points and Authorities and Declaration of Larry D. Simons in  
Support Thereof with proof of service  
(Motion filed 8/30/21)

From: 9/29/21

EH\_\_

Docket      26

**\*\*\* VACATED \*\*\*      REASON: ORDER ENTERED 10/15/21**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Silvano Pivato

Represented By  
William E. Winfield

**Joint Debtor(s):**

Victoria Ann Pivato

Represented By  
William E. Winfield

**Movant(s):**

Larry D Simons (TR)

Pro Se

**Trustee(s):**

Larry D Simons (TR)

Pro Se

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**6:21-13324 Howard Edward Terrell, Jr.**

**Chapter 7**

**#15.00** Motion to Dismiss case with a bar to refile or motion for extension of time to object to entry of discharge and deadline to file a nondischargeability complaint (Motion filed 9/21/21)

EH\_\_

**[Tele. appr. Diane Weifenbach, rep. U.S. Bank National Association as Legal Title Trustee for Truman 2016 SC6 Title Trust, Secured Creditor]**

**[Tele. appr. Matthew Abbasi, rep. moving party, CA Home Buyers 247, LLC]**

**[Tele.a appr. Joanne Andrew, rep. Debtor]**

Docket 24

**Tentative Ruling:**

**11/03/2021**

**BACKGROUND**

On June 17, 2021 (the "Petition Date"), Howard Edward Terrell, Jr. ("Debtor") filed his petition for Chapter 7 relief. Debtor had two previous Chapter 7 petitions, one dismissed on August 26, 2019 and one that was discharged on March 11, 2010. Also, Debtor had three previous Chapter 13 petitions, one dismissed on January 25, 2018, one dismissed on April 15, 2021, and one dismissed for failure to file information on January 27, 2021.

The deadline to file a motion to object to discharge was September 20, 2021. On September 20, 2021, at 11:56 pm, CA Home Buyers 247, LLC ("Creditor") filed an incomplete pleading titled "Motion to Dismiss Case with a Re-Filing Bar or Motion

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**Chapter 7**

for Extension of Time to Object to entry of Discharge and Deadline to File a Nondischargeability Complaint" ("Incomplete Pleading").

On September 21, 2021, at 2:01 am, again, Creditor filed a complete Motion to Dismiss Case with a Re-Filing Bar or Motion for Extension of Time to Object to entry of Discharge and Deadline to File a Nondischargeability Complaint ("Motion"). Service was proper. On October 15, 2021, Debtor filed an opposition stating Creditor failed to timely file the motion.

**DISCUSSION**

FED. R. BANKR. P. Rule 1017(e)(1) states:

Except as otherwise provided in § 704(b)(2), a motion to dismiss a case for abuse under § 707(b) or (c) may be filed only within 60 days after the first date set for the meeting of creditors under § 341(a), unless, on request filed before the time has expired, the court for cause extends the time for filing the motion to dismiss.

FED. R. BANKR. P. Rule 4004(a) states:

In a chapter 7 case, a complaint, or a motion under § 727(a)(8) or (9) of the Code, objecting to the debtor's discharge shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). . . . At least 28 days' notice of the time so fixed shall be given to the United States trustee and all creditors as provided in Rule 2002(f) and (k) and to the trustee and the trustee's attorney.

FED. R. BANKR. P. Rule 4004(b) states:

(1) On motion of any party in interest, after notice and hearing, the court may for cause extend the time to object to discharge. Except as provided in subdivision (b)(2), the motion shall be filed before the time has expired.

(2) A motion to extend the time to object to discharge may be filed after the time for objection has expired and before discharge is granted if (A) the objection is based on facts that, if learned after the discharge, would provide a basis for revocation under § 727(d) of the Code, and (B) the movant did not have knowledge of those facts in time

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**Chapter 7**

to permit an objection. The motion shall be filed promptly after the movant discovers the facts on which the objection is based.

FED. R. BANKR. P. 4007(c) provides:

Except as otherwise provided in subdivision (d), a complaint to determine the dischargeability of a debt under § 523(c) [11 U.S.C. § 523(c)] shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a) [11 U.S.C. § 341(a)]. The court shall give all creditors no less than 30 days' notice of the time so fixed in the manner provided in Rule 2002. On motion of a party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.

There are two prongs that must be met to satisfy Rule 4004(b) and Rule 4007(c) before an extension of time may be granted: (1) the motion must be filed before the time has expired; and (2) there must be "cause" for an extension. *See In re Abundis*, Case No.: 2:20-bk-18276-ER, 2021 Bankr. LEXIS 1671, at \*2-3 (Bankr. C.D. Cal. Mar. 8, 2021). The Court has discretion to analyze cause sufficient to extend the deadline for a creditor's time to object to entry of discharge on a case-by-case basis. *In re Farhid*, 171 B.R. 94, 96 (Bankr. N.D. Cal. 1994).

Numerous rules govern the sufficiency of pleadings. For example, FED. R. BANKR. P. 9011 provides in pertinent part:

(a) Signature. Every petition, pleading, written motion, and other paper, except a list, schedule, or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name. . . .

(b) Representations to the Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of

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existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery[.]

Here, the deadline to file a motion to object to discharge was September 20, 2021, which is 60 days from July 22, 2021, the first date set for the meeting of creditors under § 341(a). Creditor filed the Incomplete Pleading on September 20, 2021, at 11:56 pm, with less than one page of legal analysis, no signature, and no proof of service [Dkt. No. 23]. Then, on September 21, 2021, at 2:01 am, Creditor filed the Motion with five more pages of legal analysis, signature, and proof of service. [Dkt. No. 24].

Without any case law from Creditor that an incomplete pleading with no signature and no proof of service can be considered a valid request for the purpose of FRBP 1017(e) (1) and 4004(a), the Court is unable to determine that the Incomplete Pleading is a timely request to extend the deadline. Nor did Debtor analyze the issue.

**TENTATIVE RULING**

Based on the foregoing, the Court is inclined to continue the hearing for supplemental briefing.

APPEARANCES REQUIRED.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Howard Edward Terrell Jr.

Represented By  
Brian J Soo-Hoo

**Movant(s):**

CA HOME BUYERS 247, LLC

Represented By  
Matthew Abbasi

**Trustee(s):**

Arturo Cisneros (TR)

Pro Se

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**6:17-20092 Mark Bastorous**

**Chapter 7**

Adv#: 6:20-01095 Pringle v. Fannyan

**#16.00** CONT Status Conference RE: [1] Adversary case 6:20-ap-01095. Complaint by John P. Pringle against Zahra Fannyan. (Charge To Estate - \$350.00). Complaint: (1) To Avoid and Recover Transfers Pursuant to 11 U.S.C. §§548(a)(1)(A) and 550, and Cal. Civ. Code § 3439.04 (a)(1); (2) To Avoid and Recover Transfers Pursuant to 11 U.S.C. §§ 548(a)(1)(B) and 550, and Cal. Civ. Code §§ 3439.04(a)(2) and 3439.05(a); (3) To Preserve Transfers for the Benefit of the Estate Pursuant to 11 U.S.C. § 551 Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)), (14 (Recovery of money/property - other)) (Goodrich, David)

From: 7/27/20, 9/28/20, 11/30/20, 2/1/21, 7/28/21, 8/11/21. 10/20/21

EH\_\_

Docket 1

**\*\*\* VACATED \*\*\* REASON: ORDER DISMISSING CASE 10/22/21**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mark Bastorous

Represented By  
Thomas F Nowland

**Defendant(s):**

Zahra Fannyan

Represented By  
Kaveh Ardalan

**Joint Debtor(s):**

Bernadette Shenouda

Represented By  
Thomas F Nowland



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**CONT... Mark Bastorous**

**Chapter 7**

**Plaintiff(s):**

John P. Pringle

Represented By  
David M Goodrich  
Sonja Hourany

**Trustee(s):**

John P Pringle (TR)

Represented By  
David M Goodrich  
Reem J Bello

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**6:19-10556 Timothy Mark Aitken**

**Chapter 7**

Adv#: 6:20-01022 Grobstein v. Aitken

**#17.00** Defendant's Motion to Set Aside/Vacate Entry of Default and Default Judgment, for Mistake Inadvertence, Excusable Neglect and other reason

EH\_\_

**[Tele. appr. Michael Okayo, rep. Defendant]**

**[Tele. appr. Larry Simons, rep. Plaintiff]**

Docket 41

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Timothy Mark Aitken

Represented By  
Michael Okayo

**Defendant(s):**

Alicia Aitken

Represented By  
Michael Okayo

**Joint Debtor(s):**

Esmeralda Aitken

Represented By  
Michael Okayo

**Movant(s):**

Alicia Aitken

Represented By  
Michael Okayo

**Plaintiff(s):**

Howard Grobstein

Represented By

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**CONT...**

**Timothy Mark Aitken**

Larry D Simons

**Chapter 7**

**Trustee(s):**

Howard B Grobstein (TR)

Represented By  
Larry D Simons

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**6:20-10762 Daisy Wheel Ribbon Co., Inc.**

**Chapter 7**

Adv#: 6:21-01057      Speier, Chapter 7 Trustee v. Northwestern Mutual Life Insurance Company,

**#18.00** CONT. Status Conference RE: [1] Adversary case 6:21-ap-01057. Complaint by Steven M Speier, Chapter 7 Trustee against Northwestern Mutual Life Insurance Company, Milwaukee, WI, Harold W. Baer, Sharon M. Baer. (\$350.00 Fee Charge To Estate). Complaint: (1) To Avoid and Recover Fraudulent Transfers Pursuant to 11 U.S.C. §§ 544(b), 548(a)(1)(A), and 550, and California Civil Code § 3439.04(a)(1); (2) To Avoid and Recover Fraudulent Transfers Pursuant to 11 U.S.C. §§ 544(b), 548(a)(1)(B) and 550, and California Civil Code §§ 3439.04(a)(2) and 3439.05; (3) Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 U.S.C. § 550(a); and (4) To Recover and Preserve Transfers for the Benefit of the Estate Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) (Goe, Robert)

From: 7/7/21, 8/11/21, 10/20/21

EH\_\_

**[Tele. appr. Arturo Cisneros, rep. Plaintiff]**

**[Tele. appr. Louis Esbin, rep. rep. Defendants, Harold W. Baer and Sharon M. Baer]**

**[Tele. appr. Karen Tsui, rep. Defendant Northwestern Mutual Life Insurance Company]**

Docket      1

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Daisy Wheel Ribbon Co., Inc.

Represented By  
Louis J Esbin

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**CONT...      Daisy Wheel Ribbon Co., Inc.**

**Chapter 7**

**Defendant(s):**

Northwestern Mutual Life Insurance

Represented By  
Karen T Tsui

Harold W. Baer

Represented By  
Louis J Esbin

Sharon M. Baer

Represented By  
Louis J Esbin

**Plaintiff(s):**

Steven M Speier, Chapter 7 Trustee

Represented By  
Robert P Goe

**United States Bankruptcy Court  
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**6:20-10762 Daisy Wheel Ribbon Co., Inc.**

**Chapter 7**

Adv#: 6:21-01021 STEVEN M. SPEIER, solely in his capacity as Chapter 7 Trustee v. Baer et al

**#19.00** CONT. Status Conference RE: [1] Adversary case 6:21-ap-01021. Complaint by STEVEN M. SPEIER, solely in his capacity as Chapter 7 Trustee against Harold W. Baer, Kimberly A Baer, Laura Losquardo, HBall Properties, LLC. (\$350.00 Fee Charge To Estate). Complaint: 1. To Avoid And Recover Preferential Transfers Pursuant to 11 U.S.C. §§ 547 AND 550; 2. To Avoid And Recover Fraudulent Transfers Pursuant to 11 U.S.C. §§ 544(b), 548(a)(1)(A), AND 550, AND CALIFORNIA CIVIL CODE §§ 3439.04(a)(1); 3. To Avoid And Recover Fraudulent Transfers Pursuant to 11 U.S.C. §§ 544(b), 548(a)(1)(B) AND 550, and California Civil Code §§ 3439.04(a)(2) and 3439.05; 4. To Recover and Preserve Transfers For The Benefit Of The Estate Pursuant to 11 U.S.C. § 551; 5. To Recover Fraudulent Transfers Pursuant to 11 U.S.C. § 550(a); and 6. Breach Of Fiduciary Duty Nature of Suit: (12 (Recovery of money/property - 547 preference)), (13 (Recovery of money/property - 548 fraudulent transfer)) (Goe, Robert)

From: 4/28/21, 7/21/21, 9/1/21

EH\_\_

**[Tele. appr. Arturo Cisneros, rep. Plaintiff]**

**[Tele. appr. Louis Esbin, rep. Defendants, Harold W. Baer, Kimberly A. Baer, Laura Losquardo and HBall Properties, LLC]**

Docket 1

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Daisy Wheel Ribbon Co., Inc.

Represented By  
Louis J Esbin

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**CONT... Daisy Wheel Ribbon Co., Inc.**

**Chapter 7**

**Defendant(s):**

Harold W. Baer

Represented By  
Louis J Esbin

Kimberly A Baer

Represented By  
Louis J Esbin

Laura Losquadro

Represented By  
Louis J Esbin

HBall Properties, LLC

Represented By  
Louis J Esbin

**Plaintiff(s):**

STEVEN M. SPEIER, solely in his

Represented By  
Robert P Goe

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**6:20-12212 Juan Vargas**

**Chapter 7**

Adv#: 6:21-01016 Bui v. Vargas

**#20.00** CONT. Status Conference re: Complaint by Lynda T. Bui against Lourdes P. Vargas. (\$350.00 Fee Charge To Estate). (Attachments: # 1 Adversary Coversheet) Nature of Suit: (14 (Recovery of money/property - other)),(13 (Recovery of money/property - 548 fraudulent transfer)),(31 (Approval of sale of property of estate and of a co-owner - 363(h))), (11 (Recovery of money/property - 542 turnover of property))

From: 4/7/21,4/21/21, 5/26/21, 6/23/21,8/18/21, 10/20/21

EH\_\_

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 3/2/22 BY ORDER  
ENTERED 10/29/21**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Juan Vargas

Represented By  
Todd L Turoci

**Defendant(s):**

Lourdes P. Vargas

Represented By  
Michael Smith

**Joint Debtor(s):**

Anabely Vargas

Represented By  
Todd L Turoci

**Plaintiff(s):**

Lynda T. Bui

Represented By



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**CONT...**

**Juan Vargas**

Carmela Pagay

**Chapter 7**

**Trustee(s):**

Lynda T. Bui (TR)

Represented By  
Todd A. Frealy  
Carmela Pagay